

U.S. Department of Education

**Staff Report
to the
Senior Department Official
on
Recognition Compliance Issues**

RECOMMENDATION PAGE

1. **Agency:** American Bar Association (1952/2007)
(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)
2. **Action Item:** Petition for Continued Recognition
3. **Current Scope of Recognition:** The accreditation throughout the United States of programs in legal education that lead to the first professional degree in law, as well as freestanding law schools offering such programs. This recognition also extends to the Accreditation Committee of the Section of Legal Education (Accreditation Committee) for decisions involving continued accreditation (referred to by the agency as "approval") of law schools.
4. **Requested Scope of Recognition:** Same as above
5. **Date of Advisory Committee Meeting:** June, 2011
6. **Staff Recommendation:** Continue the agency's recognition and require the agency to come into compliance within 12 months, and submit a compliance report that demonstrates the agency's compliance with the issues identified below.
7. **Issues or Problems:**
 - The agency needs to adopt the proposed changes to its IOP regarding records retention and demonstrate with documentary evidence that it has implemented the amended records procedures. [602.15(b)]
 - The agency needs to demonstrate its expectation regarding job placement data it collects. [602.16(a)(1)(i)]

- The agency will need to adopt a record of student complaints standard and demonstrate with supporting documentation that it has implemented the standard in its evaluation of law schools. [602.16(a)(1)(ix)]
- The agency needs to demonstrate that its evaluation of law schools includes an assessment of the impact student loan default rate data, or the results of financial or compliance audits or program reviews on its accreditation decision. [602.16(a)(1)(x)]
- The agency needs to adopt the revisions to Standard 306 and/or the interpretations to address student identity verifications as required by this criterion. In addition, the agency will need to demonstrate that it has implemented the revisions with supporting documentation. [602.17(g)]
- The agency must demonstrate that it has reviewed and taken follow-up action, as appropriate, on its review of the annual reports and the actions it requires of its programs. [602.19(b)]
- The agency needs to demonstrate that the Council adopted the proposed changes to the standards and rules consistent with its proposals. In addition, it will need to demonstrate with supporting documentation that it has implemented the changes. [602.22(a)(2)(i-vii)]
- The agency needs to demonstrate that the Council adopted the proposed changes to the standards and rules consistent with its proposals. In addition, it will need to demonstrate with supporting documentation that it has implemented the changes. [602.22(a)(ix-x)]
- The agency needs to adopt revisions to its standards and rules regarding substantive changes in which the effective date is not retroactive. It must demonstrate implementation with supporting documentation. [602.22(b)]
- The agency needs to demonstrate with supporting documentation that it has implemented its policy to solicit and consider third party comments from the public as part of the accreditation review and decision-making. [602.23(b)]
- The agency will need to demonstrate that it has implemented the proposed revisions after adoption by the Council in June 2011. [602.23(c)]
- The agency needs to demonstrate that it has in place a process and guidance for the submission of a teach-out plan and a protocol that includes criteria established by the agency, by which it reviews and on which it bases its approval as required by this criterion. [602.24(c)(2)]

- The agency needs to demonstrate that it has developed and effectively implemented procedures for reviewing (during each comprehensive review) its requirements regarding transfer of credit. [602.24(e)]
- The agency needs to demonstrate that it has sent positive decision notifications to all of the recipients listed in 602.26(a). [602.26(a)]
- The agency needs to demonstrate that it has sent the negative decision notifications to all of the recipients listed in 602.26(b). [602.26(b)]
- The agency needs to provide evidence that it has implemented the requirement to provide the public with written notice within 24 hours after it notifies the school of the negative accreditation decision. [602.26(c)]
- The agency must provide evidence of its notice to the Department with the affected program's comments or in the alternative, notice that the affected party had been offered the opportunity to provide official comments [602.26(d)]

EXECUTIVE SUMMARY

PART I: GENERAL INFORMATION ABOUT THE AGENCY

The American Bar Association established the Section of Legal Education and Admissions to the Bar (Council) in 1893, and the Council began to conduct accrediting activities in 1923. The Council is both an institutional and a programmatic accrediting agency. The Council currently accredits 199 legal education programs. Of the legal education programs accredited/approved by the agency, 19 are freestanding law schools and maintain independent status as institutions of higher education with no affiliation with a college or university. These law schools may use the agency's accreditation to establish eligibility to participate in HEA programs. Since the agency is a Title IV gatekeeper, it must meet the Department's separate and independent criteria or seek a waiver of those requirements.

Recognition History

The then-Commissioner of Education initially recognized the Council in 1952. The agency has been recognized since that time.

The National Advisory Committee on Institutional Quality and Integrity (NACIQI) last reviewed the Council's petition for renewal of recognition at its December 2006 meeting. On June 20, 2007, the Secretary continued recognition for eighteen (18) months, extended recognition to include the Accreditation Committee of the Section of Legal Education and Admission to the Bar (Committee), and requested the agency to submit an interim report as well as a renewal petition by December 5, 2007, for the NACIQI to review at its June 2008 meeting.

Although originally scheduled to appear for review at the June 2008 NACIQI meeting, the Department administratively postponed the agency to review several third-party comments alleging substantive violations of the Secretary's criteria and deferred the agency until the December 2008 meeting. On August 14, 2008, the Higher Education Opportunity Act amended the Higher Education Act of 1965, which disbanded the existing NACIQI and revised many sections of the statute affecting the recognition of accrediting agencies. The regulations containing the Criteria for Recognition became effective July 1, 2010. Agencies with pending renewal petitions were rescheduled for full review after the full membership of NACIQI had assembled. This meeting is the first opportunity for the Council to appear before NACIQI for a review based on the revisions to the

criteria for recognition.

As part of the review of the Council for continued recognition, Department staff reviewed the agency's petition and supporting documentation, observed a site visit, and observed the decision-making meetings of the Accreditation Committee and the Council.

PART II: SUMMARY OF FINDINGS

§602.15 Administrative and fiscal responsibilities

The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.

The agency meets this requirement if the agency demonstrates that--

(a) The agency has--

(b) The agency maintains complete and accurate records of--

(1) Its last full accreditation or preaccreditation reviews of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and

2) All decisions made throughout an institution's or program's affiliation with the agency regarding the accreditation and preaccreditation of any institution or program and substantive changes, including all correspondence that is significantly related to those decisions.

The agency's internal operating procedures state in item 8 the following:

8. Maintenance of Records of Site Visits

The Consultant shall maintain a complete set of records for a sufficient period of time to cover at least the last two reviews of a law school or a law school's programs. The records shall include site evaluation and fact finder reports, law school responses to site evaluation and fact finder reports, the law school's most recent self-study, Accreditation Committee action letters, Council action letters, the law school's responses to such action letters and documents relating to the House of Delegates' consideration of appeals from, or review of Council actions.'

In addition, the agency references the ABA document retention schedule; however, the records included in this schedule under "12. Legal Education and Admission to the Bar" do not include all of the required records and compliant timeframes required under the current criterion. For example, it is not clear that the agency maintains all substantive change request decisions and annual (periodic) reports. Additionally, the agency has not established compliant retention timeframes for all required document types.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to amend its records retention policies to include all of the records required under the criterion with compliant retention timeframes

and demonstrate its application of the amended recordkeeping policies.

Analyst Remarks to Response:

The agency's response demonstrates that it was aware of the changes to the HEA that amended the requirements of the length of time in which an agency must retain all agency decisions and began making retention changes in December 2010. In its response, the agency has provided the proposed changes to its records maintenance Internal Operating Procedures. The Council will vote on the changes to the IOP at its August 2011 annual meeting. The agency will need to confirm adoption of the changes as well as submit documentary evidence of its implementation of the changes to comply with this criterion.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to adopt the proposed changes to its IOP regarding records retention and demonstrate with documentary evidence that it has implemented the amended records procedures.

§602.16 Accreditation and preaccreditation standards

(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if -

- **(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:**

- (i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.**

The agency has adopted several student achievement standards and interpretations that are sufficiently clear to enable it to consistently and fairly apply them to all law schools. In standard 301, addressing the objectives of a program of legal education, the agency's interpretation (301-3) considers the rigor of the academic program, including the assessment of student performance and the bar passage rates of its graduates. It uses three tests to determine whether a law school's bar passage rate meets this standard based on a five-year student cohort. The law school must demonstrate either that (1) 75 percent or more of the graduates who sat for the bar passed a bar examination, or (2) in at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination,

or (3) in three or more of the five most recently completed calendar years, the school's annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions. The agency requires the programs to report data from as many jurisdictions as necessary to account for 70% of its graduates each year.

The agency standard and interpretations clearly states that a school failing to meet the bar passage requirements shall be out of compliance and identifies the consequences. Additionally, other standards and interpretations require the school to assess and the site evaluators to evaluate scholastic achievement through the law school's grading system, assessment system for courses, and grade distribution, the requirements for students to remain in good standing, the process for probation or disqualification, continued enrollment of students, academic advising and support. The sample site team reports include the evaluation of student achievement through the bar passages results reported by the law school congruent with the standard. Although the site team listed the school's graduate placement over a three-year period, which for all periods met or exceeded 90 percent, there is no evidence that the agency has a standard indicating what compliance means, if it uses placement as a factor to determine student achievement.

Staff Determination: The agency does not meet the requirements of this section of the criteria. The agency reports that it evaluates placement rates as part of its assessment of student achievement, but does not provide information about its expectations for placement or the criteria by which it evaluates an institution's or program's performance in this area.

Analyst Remarks to Response:

Although the agency collects graduate placement data, there is no evidence that the agency has a standard indicating what compliance means, if it uses placement as a factor to determine student achievement. The agency reports that it is developing a new standard to address its expectations regarding job placement rates.

Staff Determination: The agency does not meet the requirements of this section of the criteria. The agency needs to demonstrate its expectation regarding job placement data it collects.

(a)(1)(ix) Record of student complaints received by, or available to, the agency.

The agency refers to Rule of Procedure 24 as evidence that it has a process to assess if a pattern of student complaints exists that would bring into question the institution's or program's 'fulfillment of one or more of the agency's expectations. Despite having procedures that are discussed in Criterion 602.23(c), the agency does not have a standard, policy or procedure to review a record of student complaints received by, or available to, the agency to include the following factors:

1. Whether the law school and/or the agency is primarily responsible for maintaining a record of student complaints.
2. Whether the record of student complaints covers at least the most recent accreditation period and includes information about how the complaints were resolved.
3. Whether the record of student complaints, wherever it is maintained, is made available to the on-site evaluators for review.

In addition, the agency did not provide evidence of implementation in the sample self-study reports, site visit reports, and site evaluator workshops and the site team did not review a record of student complaints during the site visit that staff observed.

Staff Determination: The agency does not meet the requirements of this section of the criteria. The agency needs to have a standard or policy requiring an institution or program to maintain a record of student complaints and demonstrate that it assesses if a pattern of student complaints exists that would influence a law school's fulfillment of one or more of the agency's standards and the quality of the educational program.

Analyst Remarks to Response:

In its petition the agency did not demonstrate that it has and applies a standard or policy requiring an institution or program to maintain a record of student complaints nor did it demonstrate that it assesses if a pattern of student complaints exists that would influence a law school's fulfillment of one or more of the agency's standards and the quality of the educational program.

In its response, the agency reports that at its June 2011 meeting it will consider a new Standard 512, Student Complaints, and will deliberate on whether to approve it for notice and comment. The proposed new standard 512 will fulfill this criterion's expectations regarding an agency's review of student complaints coupled with the guidance provided in the fall 2010 conduct memorandum. The agency will need to adopt a 'record for student complaints' standard and show implementation with supporting with documentation.

Staff Determination: The agency does not meet the requirements of this section of the criteria. It will need to adopt a record of student complaints standard and demonstrate with supporting documentation that it has implemented the standard in its evaluation of law schools.

(a)(1)(x) Record of compliance with the institution's program responsibilities under Title IV of the Act, based on the most recent student loan default rate data provided by the Secretary, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency; and

Standard 510 addresses student loan programs and requires a law school to take reasonable steps to minimize student loan defaults, including providing debt counseling at the inception of a student's loan obligations and prior to graduation. According to the interpretation of this standard, a law school review will include consideration of student loan default rates of its graduates, any results of financial or compliance audits and other reviews, in assessing a law school's compliance with this standard. The guide for preparing the site visit report asks the reviewers to include a description of the steps taken by the law school to minimize student loan defaults. However, neither the sample self study nor the site visit report demonstrated that mechanisms existed to incorporate information regarding an institution or program's deficiencies in its Title IV compliance into the evaluation process. In addition, no determination could be made as to whether the agency considered a law school's failure to resolve any identified deficiencies in its Title IV compliance in a timely manner. Department staff could find no evidence that the law school or the site team considered the student loan default rate or the results of financial or compliance audits in the evaluation process.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that its evaluation of law schools includes an assessment of the impact student loan default rate data, or the results of financial or compliance audits or program reviews, may have on the schools ability to comply with the agency's standards.

Analyst Remarks to Response:

The agency reports that it is reviewing this criterion to determine how to properly assess the requirement and draft an appropriate standard.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that its evaluation of law schools includes an assessment of the impact student loan default rate data, or the results of financial or compliance audits or program reviews on its accreditation decision.

§602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it--

(g) Requires institutions that offer distance education or correspondence education to have processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it--

(1) Requires institutions to verify the identity of a student who participates in class or coursework by using, at the option of the institution, methods such as--

(i) A secure login and pass code;

(ii) Proctored examinations; and

(iii) New or other technologies and practices that are effective in verifying student identity; and

(2) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.

The agency did not respond to this section of the criteria regarding student verification although it reviews the distance education modality. As an institutional accrediting agency it must ensure that law schools have processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit. In Section 602.15(a)(4), the agency specifically states, "Site teams are instructed to review distance education during a site visit as noted in the Site Evaluation Questionnaire. (See Exhibit#25-1 Site Team review of Distance Education.)" Standard 306(a) states:

"A law school may offer credit toward the J.D. degree for study offered through distance education consistent with the provisions of this Standard and Interpretations of this Standard. Such credit shall be awarded only if the academic content, the method of course delivery, and the method of evaluating student performance are approved as part of the school's regular curriculum approval process."

Exhibit 25 lists various questions that the site team must inquire about at a law school that offers some components of the J.D. program through a distance education, citing Standard 306 and Interpretations 306-4 through 306-8. The

agency serves as an institutional accrediting agency for some of the approved freestanding law school programs, and has an accreditation standard that addresses the areas in paragraph 602.16(a)(1) of this section. However, the questions site visitors should ask about distance education do not address student verification. The agency Standard 306 also fails to address student verification.

Staff Determination: The agency does not meet the requirements of this section of the criteria. It needs to revise Standard 306 and/or the interpretations to address student verifications as required by this criterion. In addition, the agency will need to demonstrate that it has implemented the revisions with supporting documentation.

Analyst Remarks to Response:

The agency needed to revise Standard 306 and/or the interpretations to address student verifications as required by this criterion. In addition, the agency needed to demonstrate that it has implemented the revisions with supporting documentation.

While the agency lists various questions that the site team must inquire about at a law school that offers some components of the J.D. program through a distance education, the questions site visitors are instructed to ask about distance education do not address student identity verification. The agency has reported that it will submit proposed revisions under Standard 306 to the Council at its June 2011 meeting for approval for notice and comment.

Staff Determination: The agency does not meet the requirements of this section of the criteria. It needs to adopt the revisions to Standard 306 and/or the interpretations to address student identity verifications as required by this criterion. In addition, the agency will need to demonstrate that it has implemented the revisions with supporting documentation.

§602.19 Monitoring and reevaluation of accredited institutions and programs.

(b) The agency must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of §602.16(f). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.

The agency uses a variety of approaches to monitor its programs. This includes annual site visits to provisionally approved programs; a 3rd year site visit to an initially- approved programs; review of substantive changes; and annual reports from all programs.

Periodic reporting is conducted via the completion of annual questionnaires by all programs. Information and data collected include, for example, program requirements, the curriculum, faculty, physical plant, administration, attrition, library resources, fiscal expenditures, scholarships, student achievement outcomes, etc. This information is then compiled (by program) by staff on a performance data indicators report. This report also identifies the thresholds/triggers of acceptable performance as well as the programs performance during the past year. Reports are forwarded to the Accreditation Committee for review and action as appropriate. While the agency has provided evidence of its application of its annual report data collection and review, with samples of completed questionnaires, performance indicator report. It is not evident that the agency has taken any follow-up action based on the review and assessment of the annual report data it has collected.

Staff Determination: The agency does not meet the requirements of this section. It needs to demonstrate that it has reviewed and taken follow-up action, as appropriate, on its review of the annual reports and the actions it requires of its programs.

Analyst Remarks to Response:

The agency needed to demonstrate that it has reviewed and taken follow-up action, as appropriate, on its review of the annual reports and the actions it requires of its programs. The agency reports that it plans to assign a subcommittee to determine the agency's intended scope of review for annual reports, including the appropriate use of the Performance Data Indicators identified by the agency as thresholds/triggers of expected performance.

Staff Determination: The agency does not meet the requirements of this criterion. The agency must demonstrate that it has reviewed and taken follow-up action, as appropriate, on its review of the annual reports and the actions it requires of its programs.

§602.22 Substantive change.

(2) The agency's definition of substantive change includes at least the following types of change:

(i) Any change in the established mission or objectives of the institution.

(ii) Any change in the legal status, form of control, or ownership of the institution.

(iii) The addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.

(iv) The addition of programs of study at a degree or credential level different from that which is included in the institution's current accreditation or preaccreditation.

(v) A change from clock hours to credit hours.

(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.

(vii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one or more of the accredited institution's educational programs.

The agency cites Rule 20 (major changes in the organizational structure) and Rule 21 (major changes in the program of legal education of provisionally or fully approved law schools) to address this section of the criteria. A careful review of the listed substantive changes identified in the rules and the interpretations in Standard 105 (addressing major changes in the legal education program or the organizational structure of a law school) did not include the following in the agency definition of substantive changes:

1. any change in the established mission or objectives of the institution; 2. any addition of courses or programs that represents a significant departure from existing offerings or method of delivery since the last reevaluation for approval; and
3. for Title IV eligible programs, entering into of contracts with a non-eligible program that will offer more than 25% of one or more educational programs.

Staff Determination: The agency does not meet the requirements of this section of the Criteria. The agency needs to demonstrate that it has policies and procedures for approving all of the substantive changes listed in this criterion and that it consistently requires institutions to obtain the agency's approval of a substantive change before it includes the change in the institution's grant of accreditation (approval).

Analyst Remarks to Response:

The supplemental documentation the agency presented in its response to the draft staff analysis demonstrates that it has proposed revisions to its rules and standards consistent with the changes emphasized in this criterion. The agency's changes are consistent with the requirements of the sections of this criterion the agency does not meet. The agency's Council will meet to consider the comments and adoptions of the proposed changes to its rules and standards regarding the specific elements of substantive change identified in the draft staff analysis.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that the Council adopted the proposed changes to the standards and rules consistent with its proposals. In addition, it will need to demonstrate with supporting documentation that it has implemented the changes.

(ix) The acquisition of any other institution or any program or location of another institution.

(x) The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

The agency cites Rule 20 (major changes in the organizational structure) and Rule 21 (major changes in the program of legal education of provisionally or fully approved law schools) to address this section of the criteria. A careful review of the listed substantive changes identified in the rules and the interpretations in Standard 105 (addressing major changes in the legal education program or the organizational structure of a law school) did not include the following in the agency definition of substantive changes:

1. The acquisition of any other program or location of another institution; and
2. The addition of a permanent location at a site at which the institution is conducting a teach-out for students of another institution that has ceased operating before all students have completed their program of study.

Staff Determination: The agency does not meet the requirements of this section of the Criteria. The agency needs to demonstrate that it has policies and procedures for approving substantive changes listed in this criterion and that it consistently requires institutions to obtain prior approval of the substantive change before it includes the change in the institution's grant of accreditation (approval).

Analyst Remarks to Response:

The supplemental documentation the agency presented in its response to the draft staff analysis demonstrates that it has proposed revisions to its rules and standards consistent with the changes emphasized in this criterion. The agency reports that the Council will meet to consider the comments and adoptions of the proposed changes to its rules and standards regarding the specific elements of substantive change identified in the draft staff analysis in August 2011.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that the Council adopted the proposed changes to the standards and rules consistent with its proposals. In addition, it will need to demonstrate with supporting documentation that it has implemented the changes.

(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, which is not retroactive, on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, these procedures may, but need not, require a visit by the agency.

The agency's written procedures do not specify an effective date for the approval of all types of substantive changes and does not make it clear that the approval cannot be retroactive. The documentation provided does not provide evidence of the agency's specifying an effective date, which is not retroactive, on which the changes is included in the law school's grant of accreditation (approval).

Staff Determination: The agency does not meet the requirements of this section of the Criteria. The agency needs to demonstrate that it has and effectively applies policies and procedures that specify an effective date for the approval of all types of substantive changes and does makes it clear that the approval cannot be retroactive.

Analyst Remarks to Response:

The agency indicated that it has revised its substantive change rules and procedures to state specifically the effective dates of decisions granting substantive change. However, the Council will not adopt or approve the recommended revisions until the June 2011 Council meeting. Until the Council acts on the recommended changes and the agency demonstrates implementation of the changes, as adopted, it will not meet this criterion.

Staff Determination: The agency does not meet this criterion. It needs to adopt revisions to its standards and rules regarding substantive changes in which the

effective date is not retroactive. It must demonstrate implementation with supporting documentation.

§602.23 Operating procedures all agencies must have.

(b) In providing public notice that an institution or program subject to its jurisdiction is being considered for accreditation or preaccreditation, the agency must provide an opportunity for third-party comment concerning the institution's or program's qualifications for accreditation or preaccreditation. At the agency's discretion, third-party comment may be received either in writing or at a public hearing, or both.

The agency has written procedures stated in its Internal Operating Practices to solicit third-party comments when it publishes a list of upcoming on-site evaluations. The agency's Website includes the list of law schools it will review in the current academic year and a notification soliciting third parties to submit their written comments to the Consultant at the agency's address. However, the agency provided no evidence that it has received third party comments calling into question the effectiveness of this mechanism to solicit 3rd party comments. The agency has not demonstrated that it has an effective mechanism for receiving public comment.

Staff Determination: The agency does not meet the requirements of this section. It needs to demonstrate that it has an effective approach to solicit 3rd party comments regarding the law schools under review.

Analyst Remarks to Response:

In its response, the agency provided documentation of an anonymous complaint it received about standards a law school may have violated , just prior to a comprehensive site review of the program. However, there is insufficient evidence that the agency included the comment in its review of the program. The site visit report provided as documentation does not appear to include any reference to the comment.

Staff Determination: The agency does not meet the requirements of this section. It needs to demonstrate with supporting documentation that it has implemented its policy to solicit and consider third party comments from the public as part of the accreditation review and decision-making.

(c) The accrediting agency must--

(1) Review in a timely, fair, and equitable manner any complaint it receives

against an accredited institution or program that is related to the agency's standards or procedures. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint;

(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and

(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.

The agency has revised recently its written complaint procedures (see Rule of Procedure 24 ' effective February 2011 - uploaded by the Department) to assess the merits of a complaint it receives against a law school in which the complaint alleges the law school has violated the standards. The policy and procedures provide for all of the elements in this criterion except the agency will defer the complaint proceedings if a party to the proceedings files or has filed a claim in another forum, such as a legal action. This deferral provision appears to delay processing a complaint until the disposition of another legal action involving parties related to the complaint. The Department perceives any delay in the processing of a complaint may' materially affect the educational program and ultimately affect the quality of education at the law school that potentially does not comply with one or more of the agency's standards. This delay will also preclude the agency from determining whether to enact its evaluation and enforcement policies prescribed in §602.19 of the Criteria for Recognition.

Additionally, the agency's revision of Internal Operating Procedures 15 and 18 effectively addresses the procedures for the Grievance Committee to handle complaints against the agency, staff, Accreditation Committee, its delegates and Council members and delegates. The sample complaint action provided by the agency demonstrated that it effectively and fairly implemented its written procedures in the handling of the complaint against the law school regarding specific standards.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to revise the provision in its rule of procedure not to allow for a delay of the review of a complaint when a claim has been filed in another forum.

Analyst Remarks to Response:

The agency has submitted for Council review at the June 2011 annual meeting proposed changes to Rule 24, which will remove the impediment that prevents the agency from following its complaint procedures when the parties are also in litigation.

Staff Determination: The agency does not meet the requirements of this section of the criteria. It will need to demonstrate that it has implemented the proposed revisions after adoption by the Council in June 2011.

§602.24 Additional procedures certain institutional accreditors must have.

If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:

- (2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.**
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The agency revised its rules of procedure to require the agency to evaluate the teach-out plan in accordance with the requirements of this criterion; this rule became effective in February 2011.

While the agency has adopted language that mirrors the language of the criterion, the agency has not demonstrated that it has in place a process and guidance for the submission of a teach-out plan nor a protocol that includes criteria established by the agency, by which it reviews and on which it bases its approval as required by this criterion.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that it has in place a process and guidance for the submission of a teach-out plan and a protocol that includes criteria established by the agency, by which it reviews and on which it bases its approval as required by this criterion.

Analyst Remarks to Response:

The agency needed to demonstrate that it has in place a process and guidance for the submission of a teach-out plan and a protocol that includes criteria established by the agency, by which it reviews and on which it bases its approval as required by this criterion. While the agency has adopted language that mirrors the language of the criterion, the agency has not demonstrated that it has in place a process and guidance for the submission of a teach-out plan nor a protocol that includes criteria established by the agency, by which it reviews and on which it bases its approval as required by this criterion.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that it has in place a process and guidance for the submission of a teach-out plan and a protocol that includes criteria established by the agency, by which it reviews and on which it bases its approval as required by this criterion.

(e) Transfer of credit policies.

The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that--

- (1) Are publicly disclosed in accordance with §668.43(a)(11); and**
- (2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.**

(Note: This criterion requires an accrediting agency to confirm that an institution's teach-out policies are in conformance with 668.43 (a) (11). For your convenience, here is the text of 668.43(a) (11):

“A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum –

- (i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and**
 - (ii) A list of institutions with which the institution has established an articulation agreement.”)**
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The recently revised Standard 509(b) [Basic Consumer Information Standard] became effective in February 2011 and complies with this criterion. At this time, however, the agency does not appear to have incorporated the new standard into its review and evaluation of law schools. The supporting documentation provided no documentation to demonstrate plans to implement the review of this new standard in the evaluation or decisions of law schools. Additionally, Department staff reviewed the various exhibits used to train site evaluators, guide schools in preparing the self-study, and decision letters for indications that the agency does include a review of the transfer of credit policies as part of its evaluation and approval of law schools; but did not find any.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that it has developed and effectively implemented procedures for reviewing (during each comprehensive review) its requirements regarding transfer of credit.

Analyst Remarks to Response:

The agency needed to demonstrate that it has developed and effectively implemented procedures for reviewing (during each comprehensive review) its requirements regarding transfer of credit. While the agency has provided documentation it has not demonstrated its review of transfer of credit policies as part of its comprehensive review of a law school. Rather the documentation is an “add-on” to a follow-on report and not as the result of a review of the school’s transfer of credit policies. Also, the agency contacted a school on March 31, and urgently, recommended that the school must demonstrate compliance with the transfer of credit requirement when it appeared before the Accreditation Committee in less than 30 days. Staff concludes that this is not a demonstration of the effective application of the agency’s transfer of credit policies and that given time to implement guidance for agencies, site teams and the Accreditation Committee and Council, the agency will be able to demonstrate it has effective procedures incorporated into its review process.

Staff Determination: The agency does not meet the requirements of this criterion. The agency needs to demonstrate that it has developed and effectively implemented procedures for reviewing (during each comprehensive review) its requirements regarding transfer of credit.

§602.26 Notification of accrediting decisions

The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures--

(a) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after it makes the decision:

(1) A decision to award initial accreditation or preaccreditation to an institution or program.

(2) A decision to renew an institution's or program's accreditation or preaccreditation;

The agency has compliant written policies; however, it has not provided documentation demonstrating that it notifies all of the entities listed in the criterion of the accreditation decisions defined in this requirement within the appropriate time frame.

Staff Determination: The agency does not meet the requirements of this section. It needs to demonstrate that it effectively applies its policy that it will notify all of the entities under this criterion with notice of its decision no later than 30 days after it reaches a decision.

Analyst Remarks to Response:

The Accreditation Committee recommended that several schools receive provisional or full approval, positive decisions at its April 2011 meeting. Since the Council will not meet until after the NACIQI meeting, it will not have an opportunity to send notices of positive decisions until it adjourns its meeting. The agency has submitted the proposed draft letter it will use to send out notification of positive Council decision and includes state approval agencies. However, the agency will need to demonstrate implementation that it has sent the required notifications.

Staff Determination: The agency does not meet the requirements of this criterion. It will need to demonstrate that it has sent the positive decision notifications to all of the recipients listed in 602.26(a).

(b) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:

(1) A final decision to place an institution or program on probation or an equivalent status.

(2) A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program;